

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Lobianco

v.

No.

2018 CH 07495City of Chicago Police Bd.et al.

ORDER

Fry

v.

No. 2018 CH 07752Johnson et al.

This cause coming before this honorable Court for ruling, all parties present through Counsel, IT IS HEREBY ORDERED: consistent with the Court's reading of its decision on the record and pursuant to a written decision to be provided on May 24, 2019, the Police Board's decisions are affirmed in both the Lobianco and Fry matters.

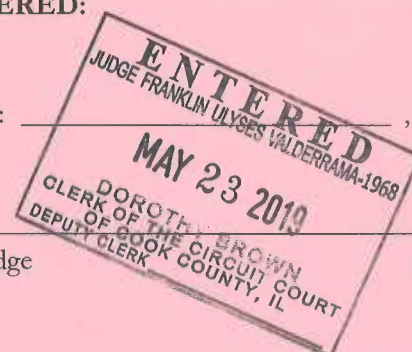
Attorney No.: 90909Name: Hillina TamratAtty. for: Supt. JohnsonAddress: 30W. LaSalle, St 1040City/State/Zip: Chicago IL 60602Telephone: 312 749 3447

ENTERED:

Dated: _____

Judge

Judge's No. _____



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

ROBERT LOBIANCO,

Petitioner,

v.

CITY OF CHICAGO POLICE BOARD AND THE
SUPERINTENDENT OF CHICAGO POLICE,

Respondents.

Case No. 2018 CH 7495

Consolidated with

KEVIN FRY,

Petitioner,

v.

CITY OF CHICAGO POLICE BOARD AND THE
SUPERINTENDENT OF CHICAGO POLICE,

Respondents.

Case No. 2018 CH 7752

Calendar 03
Honorable Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Petitioner, Kevin Fry's Petitions for Administrative Review. For the reasons that follow, Fry's Petition is denied.

INTRODUCTION

Petitioner, Kevin Fry ("Fry") was a Chicago Police Officer. On May 17, 2018, Respondent, the City of Chicago Police Board (the "Board") found him guilty of violating certain rules of the Chicago Police Department and discharged him from his position as a Chicago Police officer. Fry seeks review of the Board's decision.

BACKGROUND

On July 25, 2013, Fry and his partner Robert Lobianco ("Lobianco") responded to a 911 call in the 9500 block of S. Avenue M (the "Premises") of a person calling for help (the "Incident").

Lobianco and Fry arrived at the Premises, and heard yelling coming from inside the garage located on the Premises. Fry banged on the overhead garage door, and after receiving no response, Lobianco and Fry went to find another entrance to the garage. When they located another entrance to the garage, referred to in the record as the “service door” Lobianco banged on the service door, identified himself as a police officer and ordered the occupants to open the door. Fry entered the garage behind Lobianco, and they found two individuals inside the garage, Frank Vasquez (“Vasquez”) and Cheyenne Bailey (“Bailey”). There was a physical struggle between Fry, Lobianco, and Vasquez. Vasquez was ultimately arrested.

Lobianco prepared an arrest report following the Incident (the “Arrest Report”), in which he stated that when he and Fry forced entry into the garage, he observed Vasquez on top of Bailey, and that Vasquez became an assailant and active resister before he was placed under arrest. (R 14). Fry completed the Original Case Incident Report associated with Vasquez’s arrest (the “Incident Report”). In the narrative section of the Incident Report, Fry wrote that he and Lobianco “observed Frank Vasquez (Offender & Ex-boyfriend) on top of Cheyenne Bailey (Victim and Complainant), who was on the ground with Vasquez physically restraining Bailey.” (R 463, 555).

Bailey signed a domestic battery misdemeanor complaint against Vasquez, which stated:

In that he/she without legal justification knowingly/intentionally caused bodily harm to Cheyenne N. Bailey, an ex-girlfriend of the defendant (Mr. Vasquez) in that said defendant forcibly pushed complainant causing her to fall on the ground causing pain and scratches on her arms.

(R 14).

Vasquez’s criminal bench trial (the “Criminal Trial”) took place on November 7, 2013. At the Criminal Trial, Lobianco testified that when he first entered the garage, he saw Vasquez on top of Bailey, and that he and Fry had to remove Vasquez from Bailey. Fry testified that he entered the garage five seconds after Lobianco and that he observed Bailey still on the ground with Vasquez holding her down. Vasquez, on the other hand, denied that he was on top of Bailey when Lobianco and Fry entered the garage, and presented video footage in support of his defense. The video, which was recorded from a security camera on the Premises showed that Vasquez and Bailey were standing and that Vasquez was in the process of opening the service door when Lobianco kicked the door in. Vasquez was acquitted at the conclusion of the one day trial.

On December 2, 2013, Vasquez filed a complaint with the Independent Police Review Authority (“IPRA”) regarding the alleged misconduct of Lobianco and Fry. IPRA closed its investigation on February 6, 2014, as Vasquez did not provide an affidavit to support his complaint. (R 125). On March 31, 2016, IPRA reopened its investigation based on the video footage that Vasquez presented at the Criminal Trial. IPRA completed and closed its investigation on January 5, 2017, and the Superintendent filed the instant charges against Lobianco and Fry.

On June 29, 2017, the Superintendent of the Chicago Police Department (the “Superintendent”) filed charges against Fry for violation of Rules 1, 2, and 14 of the Chicago Police Department Rules and Regulations. The charges allege that Fry falsely stated in the Incident Report that he observed Vasquez on top of the victim, Bailey, when he responded to the Incident. Lobianco was also charged with making a false statement to that effect during his testimony at the Criminal Trial.

On June 25, 2018, Lobianco and Fry filed a Joint Motion to Strike and Dismiss all Charges (the “Motion”). The Motion argued, among other things, that the Fry and Lobianco’s rights to due process were violated because the Superintendent failed to bring timely charges. The motion also sought dismissal based on the doctrine of laches. The Motion was denied in its entirety.

On February 27 and 28, 2018, a hearing took place before Hearing Officer Jeffrey Cummings (the “Hearing”). Because the charges against both Fry and Lobianco arose from the same underlying incident, the Board held a consolidated hearing. Vasquez, Lobianco, and Fry, among others, testified at the Hearing. The Hearing Officer found Lobianco guilty on all charged rule violations in relation to his statement that he observed Vasquez on top of Bailey. The Board adopted those findings and issued an order discharging Officers Lobianco and Fry from their respective positions as police officers.

Fry subsequently filed a Petition for Administrative Review arguing that the Board’s decision was arbitrary and capricious, against the manifest weight of the evidence, clearly erroneous, and contrary to the governing law and regulations based on the totality of the record. This matter was consolidated with Lobianco’s case, Case No. 18 CH 7752, by Order dated November 29, 2018. Fry’s fully briefed Petition is presently before the Court.

ADMINISTRATIVE REVIEW STANDARD

Final administrative decisions of the Board are subject to judicial review under the Administrative Review Law, 735 ILCS 5/3-101, *et seq.* (West 2016). On administrative review, the standard of review applied by the trial court depends on the issues presented on review. *Express Valet Inc. v. City of Chi.*, 373 Ill. App. 3d 838 (1st Dist. 2007). There are three types of questions that courts may encounter on administrative review of an agency’s decision: (1) questions of fact, (2) questions of law, and (3) mixed questions of fact and law. *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 210 (2008). However, under any standard of review, a plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden. *Marconi v. Chi. Heights Police Pension Bd.*, 225 Ill. 2d 497, 532 (2006).

On administrative review, an administrative agency’s findings and conclusions of fact are deemed to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2016); *O’Boyle v. Personnel Bd. of Chi.*, 119 Ill. App. 3d 648, 653 (1st Dist. 1983). Consequently, when a decision presents purely a question of fact, the standard of review to be applied is whether the findings of fact are against the manifest weight of the evidence. *Belvidere v. Ill. State Labor Relations Bd.*, 181 Ill. 2d 191, 204 (1998). An administrative agency’s factual findings are against the manifest weight of the evidence if no trier of fact could have agreed with the agency or an opposite conclusion

than that reached by the agency is clearly evident. *Wade v. City of North Chi. Police Pension Bd.*, 226 Ill. 2d 485, 505 (2007). In examining an administrative agency's factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. *Cinkus*, 228 Ill. 2d at 210. Indeed, "a reviewing court may not re-evaluate the credibility of witnesses or resolve conflicting evidence." *Alden Nursing Ctr.-Morrow, Inc. v. Lumpkin*, 259 Ill. App. 3d 1027, 1033 (1st Dist. 1994). If the issue before the reviewing court is merely one of conflicting testimony and credibility of witnesses, the administrative board's decision should be sustained. *O'Boyle*, 119 Ill. App. 3d at 653. Because the weight of the evidence and the credibility of the witness are within the province of the agency, there need only be some competent evidence in the record to support its findings. *Trettenero v. Police Pension Fund of the City of Aurora*, 333 Ill. App. 3d 792, 802 (2d Dist. 2002). Although "manifest weight of the evidence" is a high standard of review, it does not relieve the court of its duty to examine the evidence in an impartial manner and set aside an agency order that is unsupported in fact. *Boom Town Saloon, Inc. v. City of Chi.*, 384 Ill. App. 3d 27, 32 (1st Dist. 2008). When there is evidence to support the agency's findings, its decision will be affirmed. *Commonwealth Edison Co. v. Prop. Tax Appeal Bd.*, 102 Ill. 2d 443, 467 (1984).

When an agency's decision comes before a trial court challenging a question of law, the agency's findings are not binding on a reviewing court and the agency's decision is reviewed *de novo*. *Cinkus*, 228 Ill. 2d at 210. While an agency's interpretation of a statute is a question of law, a court should afford substantial deference to an agency's interpretation of a statute which the agency administers, as an agency is presumed to make informed judgments based on its experience and expertise substantial deference should be given to its statutory interpretation. *Kaszynski v. Ill. Dep't of Public Aid*, 274 Ill. App. 3d 38, 41 (3d Dist. 1995); *Swoope v. Ret. Bd. of the Policemen's Annuity & Benefit Fund*, 323 Ill. App. 3d 526, 529 (1st Dist. 2001).

Finally, mixed questions of law and fact are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard. *Cinkus*, 228 Ill. 2d at 210. Where a question of an agency's decision is a mixed question of law and fact, it is subject to the "clearly erroneous" standard of review. *Marconi*, 225 Ill. 2d at 532. An administrative agency's decision is deemed "clearly erroneous" when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Cinkus*, 228 Ill. 2d at 210.

DISCUSSION

Fry argues that his Petition should be granted and that the Board's decision should be reversed. Fry asserts, at the outset, that he is not asking the Court to substitute its judgment and re-weigh the evidence. Rather, submits Fry, he requests that the Court find that the Board's decision is contrary to the manifest weight of the evidence, as the record demonstrates that the video evidence relied upon by the Board was of poor quality, and Vasquez's testimony was incredible.

Fry contends that the record demonstrates that the video was dark, grainy, and blurry. (R 531). Fry also contends that Vasquez's testimony is full of discrepancies and improbabilities. Fry notes that Vasquez testified that he did not remember exact details, and that he was confused or nervous. (R 488). Fry concludes that the Board erred in crediting Vasquez's testimony.

Fry also challenges the Board's finding that Lobianco and Fry had a motive to provide false testimony. According to Fry, the Board speculated that Fry and Lobianco's testimony that Vasquez was on top of Bailey provided a more persuasive justification for the use of force by both officers. However, notes Fry, the Superintendent did not file any charges relating to excessive force. Thus, Fry concludes that the Board's contention is misplaced.

Fry next argues that the Superintendent offered no evidence that Fry violated Rules 1 and 14. Fry asserts that there was no evidence presented that Fry willfully provided a false statement in violation of Rule 14, let alone that Fry committed perjury in violation of Rule 1. Fry notes that the criminal complaint charging Vasquez with domestic battery did not contain Fry's allegedly false allegation that Vasquez was on top of Bailey. Fry further contends that the Board's finding that the video depicted a different version of events than what Fry testified to did not satisfy the Superintendent's burden of proving Fry violated Rule 1 by committing perjury, or violated Rule 14 by willfully making a false statement that was material to the matter being investigated. Fry maintains that his statements in the Incident Report and at the Criminal Trial were mistakes, and that mistakes do not constitute a Rule 14 violation or perjury.

Finally, Fry asserts that the Board's order discharging him from the Chicago Police Department was arbitrary, capricious, and unrelated to the requirements of service. Fry argues that the Board erred by not granting sufficient weight to the substantial mitigation evidence presented on his behalf. Specifically, notes Fry, during his 12 years of service as a Chicago police officer, he earned over 113 awards, and several character witnesses testified to his honesty, character, and integrity. Fry insists that any mistakes in the drafting of the Incident Report or in his testimony based thereon were an aberration from the level of service he has provided to the Department throughout his career, and the Court should find that the Board erred in ordering the penalty of discharge.

The Superintendent responds that the Board's factual findings are held to be *prima facie* true and correct, and will not be disturbed unless they are contrary to the manifest weight of the evidence, citing 735 ILCS 5/3-110. Here, asserts the Superintendent, the Board's main factual finding is that Vasquez was not on top of Bailey when Lobianco entered the garage, and thus Lobianco and Fry could not have seen Vasquez on top of Bailey when he entered the garage. The Superintendent therefore found that Fry was lying when he wrote in the Incident Report that Vasquez was on top of Bailey, when he testified under oath that he and Lobianco had to pull Vasquez off of Bailey, and when he testified at the Hearing that he may have been mistaken as to how the events transpired. Specifically, the Superintendent points to Vasquez's testimony that he was in the process of opening the door from inside the garage when Lobianco kicked it in, and that he and Bailey were standing. According to the Superintendent, the Board found this testimony to be corroborated by video footage from the security camera in the area. While Fry testified that he was simply mistaken as to how the Incident transpired due to the chaotic nature at the scene, the Board found his testimony less credible. As there is ample evidence in the record to support these findings, concludes the Superintendent, they are not against the manifest weight of the evidence.

The Superintendent asserts that the standard is whether there is any evidence that supports the Board's findings. The Superintendent argues that on administrative review, a court cannot reweigh the evidence or the determination of credibility of the witnesses, citing *Haynes v.*

Police Bd. Of Chicago, 293 Ill. App. 3d 508 (1st Dist. 1997). In making its credibility determination, notes the Superintendent, the Board considered Fry and Lobianco's previous unequivocal assertions that they observed Vasquez on top of Bailey, contrasted with their equivocation as to that point at the Hearing. The Superintendent emphasizes that the Board found that the difference between the alternative versions of what occurred is so dramatic that it is simply not possible to believe that Lobianco and Fry could have been mistaken about their testimony. (R 19-20). The Board maintains that it is not credible that the chaos at the scene led Fry to be mistaken about what he saw.

Having found that Fry lied when he wrote in the Incident Report that Vasquez was on top of Bailey, the Board determined that he violated, *inter alia*, Rule 14, making a false report whether written or oral. For a Rule 14 violation under the relevant labor contract applying to police officers, notes the Superintendent, the false report must be both "willful" and "material." According to the Superintendent, the Board's finding that Fry lied rather than being mistaken means that the false statement was willful. Regarding the materiality requirement for a Rule 14 violation, the Superintendent posits that because the false statement was written in the Incident Report documenting the basis for Vasquez's arrest for domestic battery, the fact that the officers observed the offender on top of the victim is material to the charge.

As to the perjury charge, the Superintendent maintains that Fry knowingly made a false statement, and that it was material. Knowledge of the falsity of a statement, asserts the Superintendent, may be inferred from proof that the statements in question were in fact false, citing *People v. Boyd*, 81 Ill. App. 3d 259, 261 (3rd Dist. 1980). As to the materiality, the Superintendent argues that the fact that the false statement had a tendency to influence a judge that Vasquez had pushed Bailey and caused her to fall is sufficient to prove materiality. The Superintendent reiterates that the Board's findings are well supported by the evidence in the record and should be affirmed.

Last, the Superintendent contends that an administrative agency's finding of cause of discharge is entitled to considerable deference, and should be overturned only if it is arbitrary and unreasonable or unrelated to the requirements of service. Fry's falsification of an Incident Report and perjury, contends the Superintendent, go to the very essence of his job as a police officer, citing *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011). Considering that Fry falsified an Incident Report and committed perjury, notes the Superintendent, his argument that discharge is excessive, arbitrary, unreasonable, and unrelated to the needs of the service is without merit. As such, the Superintendent concludes that the Court should affirm the Board's decision discharging Fry.

Fry retorts that, contrary to the Superintendent's assertion, he is not asking the Court to reweigh the evidence or determine credibility of witnesses. Rather, insists Fry, Vasquez's version of events were at odds with the totality of the evidence, which included Fry and Lobianco's testimony and the video. Fry further contends that the Board has not presented evidence that Fry willfully lied in his report, and rather discredits Fry's testimony that it was a chaotic situation and may have been mistaken in recalling which person he pulled off of whom during the struggle. According to Fry, it is highly probable that he could have been mistaken as to which person he physically removed from another person during such an intensely prolonged

and chaotic physical struggle. As such, Fry reasserts that his mistake does not establish that his testimony was a willful lie.

Fry further contends that the Superintendent is incorrect on materiality. Fry maintains that his statements in the Incident Report were not material, as the complaint against Vasquez for domestic battery did not contain Fry's statement that he observed and/or removed Vasquez from on top of Bailey. As such, Fry concludes that materiality was not established at the hearing.

Next, Fry maintains that the Board failed to consider mitigation evidence. Fry submits that the Board's decision to discharge him was arbitrary, capricious, excessive, and unreasonable in light of his exemplary work record and extensive and extraordinary character witness testimony. As such, Fry concludes that the decision to discharge him should be reversed.

At the outset, the Court notes that in his Brief in Support of Administrative Review, Fry mentions in passing that he seeks review of the Board's denial of the Motion to Strike or Dismiss made prior to the Hearing. This is a wholly undeveloped request with no authority offered in support, and thus the Court will not entertain it. The Court turns then to the Petition.

In this case, Fry is charged with violating Rules 1, 2, and 14 contained in Article V of the Rules and Regulations of the Chicago Police Department, which were in full force and effect on the date of the alleged violations. Specifically, Fry was charged with the following violations:

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 14: Making a false report, written or oral.

Fry was charged with violating Rules 1 and 2 for allegedly committing perjury by falsely testifying at the Criminal Trial. (R 1). Fry was charged with a violation of Rules 1, 2, and 14 for allegedly falsely reporting in the Incident Report that he observed Vasquez on top of Bailey. (R 2-3). Fry advances several arguments seeking reversal of the Board's decision. The Court addresses each in turn.

A. Whether the Board's Fact and Credibility Findings Are Against the Manifest Weight of the Evidence

Fry argues that the video was inconclusive, and that Vasquez's testimony was inconsistent and not credible.

In examining an administrative agency's factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. *Cinkus*, 228 Ill. 2d at 210. Indeed, "a reviewing court may not re-evaluate the credibility of witnesses or resolve conflicting evidence." *Alden Nursing Ctr.-Morrow, Inc.*, 259 Ill. App. 3d at 1033. If the issue before the reviewing court is merely one of conflicting testimony and credibility of witnesses, the administrative board's decision should be sustained. *O'Boyle*, 119 Ill. App. 3d at 653. Moreover,

to the extent that the Court can review credibility determinations, the Court nevertheless finds that the Board's credibility determinations are not against the manifest weight of the evidence. While Fry notes that Vasquez's testimony was in his opinion, somewhat inconsistent, Vasquez's testimony was corroborated by the video evidence reviewed by the Board. As to Fry's testimony, the Board found that it was not believable that he could have been mistaken about how the Incident occurred, as the Board found this to be at odds with the character testimony presented as well as Fry's experience. (R 20). The assessment of the credibility of the witnesses is exclusively within the province of the agency. *Trettenero v. Police Pension Fund*, 333 Ill. App. 3d 792, 802 (2nd Dist. 2002). The Court finds competent evidence in the record in support of the Board's credibility determinations. As such, the Court will not disturb the Board's credibility findings, namely, that Vasquez's testimony was credible, and that Fry's testimony was not credible.

The Court turns, next to the Board's finding that Vasquez was not on the ground on top of Bailey when Lobianco and Fry entered the garage. Although "manifest weight of the evidence" is a high standard of review, it does not relieve the court of its duty to examine the evidence in an impartial manner and set aside an agency order that is unsupported in fact. *Boom Town Saloon, Inc.*, 384 Ill. App. 3d at 32. When the agency decision contains no valid findings or explanation for its decision, remand to the agency is appropriate. *Violette v. Dep't of Healthcare & Family Servs.*, 388 Ill. App. 3d 1108, 1113 (5th Dist. 2009). On the other hand, when there is evidence to support the agency's findings, its decision will be affirmed. *Commonwealth Edison Co.*, 102 Ill. 2d at 467. Here, there was ample evidence in the record to support the Board's finding that Vasquez was not on top of Bailey when Lobianco and Fry entered the garage. Specifically, there was video footage recorded of the incident that corroborated Vasquez's testimony that he was standing in front of the door, and not on top of Bailey, when Lobianco kicked in the service door. (R 16-18). While Fry contends that Vasquez's version of events were at odds with the totality of the evidence, which included Fry and Lobianco's testimony and the video, this is not the applicable standard. The standard is whether there is any evidence that supports the Board's decision. *Commonwealth Edison Co.*, 102 Ill. 2d at 467.

Thus, the Court concludes that the Board's findings that: (1) Vasquez and Bailey were standing when they entered the garage; and (2) that Fry provided false statements and testimony on this issue are not against the manifest weight of the evidence.

B. Whether the Board's Finding that Fry Violated Rules 2 and 14 by Falsely Reporting in an Incident Report that he observed Vasquez on top of Bailey is Clearly Erroneous

The Collective Bargaining Agreement between the Fraternal Order of Police Chicago Lodge No. 7 and the City of Chicago provides in Article 6, Section 6.1M that "the Employer shall not charge an officer with a Rule 14 violation unless it has been determined that: (1) the officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation." (R 27). The Board found that both elements were proven in Fry's case. Specifically, the Board found that the Superintendent proved that Fry's statement that he observed Vasquez on top of Bailey was willfully made and was false, and that it was material to the investigation. Fry argues that there was no evidence adduced at the hearing that he knew the statements were false at the time of utterance or that he willfully made a

false statement. While Fry argues that the standard of review of this issue is the manifest weight of the evidence standard. The Superintendent, also contends that the manifest weight of the evidence standard is applicable. However, the Court disagrees, and finds that the issue is subject to the “clearly erroneous” standard.

Mixed questions of law and fact are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard. *Cinkus*, 228 Ill. 2d at 210. Where a question of an agency’s decision is a mixed question of law and fact, it is subject to the “clearly erroneous” standard of review. *Marconi*, 225 Ill. 2d at 532. An administrative agency’s decision is deemed “clearly erroneous” when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Cinkus*, 228 Ill. 2d at 210.

While Fry argues that the Superintendent did not put on evidence that he was not mistaken, this is incorrect. The Superintendent presented the testimony of Vasquez as well as the video recording of the Incident to support his argument that Fry could not have been mistaken about what he had seen. In the absence of such a mistake, the Board concluded that Fry’s statement that he observed Vasquez on the ground on top of Bailey must have been willful.

After reviewing the record, the Court is not left with the definite and firm conviction that a mistake has been committed. Specifically, the Court finds that the Board did not misapply the law by finding that Fry’s misstatement in the Incident Report was (1) willfully made, and (2) material. The Board found that Fry’s statement was false, and was willfully made. The Board further found that the statement that Vasquez was lying on top of Bailey was material because, if believed, it would tend to prove that Vasquez “forcibly pushed [Bailey] causing her to fall on the ground” as alleged in the domestic battery complaint against Vasquez. Moreover, the Board found that this statement could influence the trier of fact.

Even if the Court applies the “manifest weight of the evidence” standard, the result is the same. An administrative agency’s factual findings are against the manifest weight of the evidence if no trier of fact could have agreed with the agency or an opposite conclusion than that reached by the agency is clearly evident. *Wade v. City of North Chi. Police Pension Bd.*, 226 Ill. 2d 485, 505 (2007). As discussed above, there is evidence in the record to support the Board’s findings that Fry’s statement was both false and willfully made. There is also evidence in the record that the statement was material to the issue in question. Therefore, the Court finds that an opposite conclusion to the one reached by the Board is not clearly evident. As such, the Board’s finding that Fry violated Rules 2 and 14 by making a false statement in the Arrest Report is not against the manifest weight of the evidence.

C. Whether the Board’s Finding that Fry Violated Rule 1 for Perjury is Clearly Erroneous

Fry next argues that the Board’s determination that he violated the Illinois perjury statute must be reversed. The Illinois perjury statute provides:

A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law the oath or affirmation is required, he or she makes

a false statement, material to the issue or point in question, knowing the statement is false.

720 ILCS 5/32-1(a) (West 2013).

Here, the proper standard is the “clearly erroneous” standard. For the reasons discussed above, the Court finds the Board’s finding that Fry’s misstatement in his testimony at the Criminal Trial was knowingly and willfully made was not clearly erroneous. The Court further finds that Fry has failed to establish that the misstatement at the Criminal Trial was not material to the issue or point in question. As such, the Court finds that Fry has failed to demonstrate the Board’s finding that Fry violated the Illinois perjury statute, and consequently Rule 1, is clearly erroneous. As such, the Board’s finding that Fry violated Rules 1 and 2 by making false statements at the Criminal Trial was clearly not erroneous.

D. Whether Discharge of Fry is Unreasonable, Arbitrary, or unrelated to the Purpose of the Relevant Statute.

Review of an administrative agency’s discharge decision requires a two-step analysis. *Siwek v. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 737 (5th Dist. 2007). First, the Court must determine whether the agency’s finding of guilt is against the manifest weight of the evidence. Second, the Court must determine whether the factual findings supported its determination that cause for discharge existed. *Id.*

Cause has been defined as “some substantial shortcoming that renders the employee’s continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for his no longer holding the position.” *Sangirardi v. Village of Stickney*, 342 Ill. App. 3d 1, 17-18 (1st Dist. 2003). An administrative tribunal’s finding of cause for discharge is to be overturned only if it is arbitrary and unreasonable or unrelated to the requirements of the service. *Walsh v.*, 96 Ill. 2d at 105.

As discussed above, the Court finds that the Board’s findings of Rule violations were not against the manifest weight of the evidence. The Court now considers whether the factual findings support the Board’s determination that cause for discharge existed. The record in this case establishes that the penalty of discharge was imposed because of the seriousness of the misconduct at issue. (R 32). Specifically, the Board found that Fry’s misconduct was incompatible with continued service as a police officer and warrants his discharge, as he knowingly and intentionally falsified official police reports and lied under oath at a criminal trial. (R 32). According to the Board, such conduct is “antithetical to that expected and required of a police officer, who at all times has a duty to act with honesty and integrity, not falsify reports and commit perjury in the course of one’s official duties.” (R 32). Fry fails to argue how the penalty of discharge for making false statements is unreasonable or unrelated to his employment as a police officer. The Court finds that Fry has not met his burden in establishing that the factual findings did not support the Board’s determination.

Fry emphasizes the commendations he received while serving on the police force, and the character evidence provided at the hearing, and argues that the Board failed to consider this mitigation evidence. The Court disagrees. The Board considered Fry’s accomplishments and

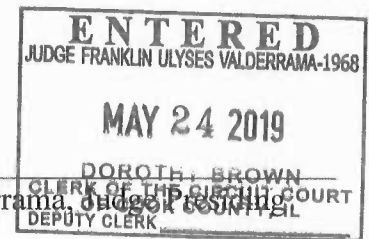
nevertheless decided that they did not outweigh the seriousness of the misconduct in this case. Moreover, an administrative agency need not give mitigating evidence sufficient weight to overcome a determination decision. *Siwek*, 374 Ill. App. 3d at 738. Thus, the Board's imposition of the sanction of discharge is not unreasonable or arbitrary.

CONCLUSION

For the foregoing reasons, Petitioner, Kevin Fry's Petition for Administrative Review is denied.

ENTERED:

Franklin U. Valderrama, Judge Presiding



DATED: May 23, 2019
